

REMARKS

In response to the Examiner's restriction requirement, Applicant elects, with traverse, Group I, claims 1-16 and 40-49, drawn to a composition comprising a fluorophore compound comprising a fluorophore group and a fluorescence quenching group.

The Examiner has alleged that the inventions of Groups I, II and III are distinct from each other. Applicant respectfully traverses the restriction requirement because these groups of claims are directed to patentably related and non-distinct inventions.

As the Examiner acknowledges, Groups I and (II and III) are related as product and process of use. There is a common thread that ties these groups together, that is, a fluorophore compound comprising a fluorophore group and a fluorescence quenching group. Due to this common thread, Applicant believes that a search conducted for all of these groups would not be unduly burdensome. For example, as acknowledged by the Examiner, Group I encompasses molecules labeled with a fluorophore and a quencher, whereas Group III encompasses nucleic acids labeled with fluorophores and quenchers. It is apparent that the searches for Group I and Group III can be coextensive.

As to Groups I and II, Applicant believes that searches for fluorophore compounds of Group I and the method of detecting intramolecular chemical ligation of Group II can also be coextensive because of the common element shared by these two groups, i.e., fluorophore compounds comprising fluorophore groups and quenching groups.

In the event that the restriction requirement is not withdrawn, Applicant submits that the process claims of Groups II and III should be rejoined with the product claims of Group I and fully examined for patentability upon the allowance of the product claims in accordance with the provisions of MPEP §821.04.

The Examiner also requests that a single disclosed species be elected for prosecution on the merits to which the claims shall be restricted. In response, Applicant believes that the disclosed species are patentably related and non-distinct. However, in order to further the examination, Applicant elects the species of a nucleic acid (subject matter of claim 5 in part and claims 6-11) from the group of fluorophore compounds, the species of fluorescence quenching group attached to the 5' end of the first nucleic acid probe and nucleophilic group attached to the 3' end of the second nucleic acid probe (subject matter of claim 41) from the group of relationship between quenching groups and nucleophilic groups, and the species of fluorescence quenching group attached to the first nucleic acid probe two nucleotides away from the fluorophore group (subject matter of claim 44) from the group of relationship between quenching groups and fluorophores.

It is believed that the present election of species is made merely for the purpose of giving the Examiner a starting point for examination and that any amendments to cancel the non-elected species are not necessary at this stage of the prosecution in accordance with MPEP 809.02(a), since no final decision has been made on the allowability of the generic claim(s). The claims that are readable upon the presently elected species are claims 1-15, 40, 41, 44 and 46-49, among which claims 1-4 and 12-15 are generic for the group of fluorophore compounds; claims 40 and 46-49 are generic for the group of relationship between quenching and nucleophilic groups as well as for the group of relationship between quenching groups and fluorophores; claims 5-11 read on the species of nucleic acids; claim 41 reads on the species of quencher attached to the 5' end of the first nucleic acid probe and nucleophilic group attached to the 3' end of the second nucleic acid probe; claim 44 reads on

the species of quencher attached to the first nucleic acid probe two nucleotides away from the fluorophore group.

This document is being filed timely and no fee is believed to be due. However, should any fees be required for any reason, the Commissioner is authorized to deduct said fees from Howrey Deposit Account No. 08-3038, referencing Attorney Docket No. 12665.0024.NPUS01.

Respectfully submitted,



J. Wendy Davis, Ph.D.

Reg. No. 46,393

Agent for Assignee

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STANFORD JUNIOR UNIVERSITY

Customer No. 23369

HOWREY LLP
1111 Louisiana, 25th floor
Houston, TX 77002
(713) 787-1512 (Direct)

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